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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,656	06/26/2006	Hiroshi Yamada	0388-061892	8167

28289 7590 10/08/2009  
THE WEBB LAW FIRM, P.C.  
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EXAMINER
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JACYNA, J CASIMER

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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10/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/584,656	<b>Applicant(s)</b> YAMADA ET AL.	
	<b>Examiner</b> J. Casimer Jacyna	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05/22/09</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 7-10, 13, 14, 17-20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson 4,002,168 in view of Hamamoto 2002/0190079.

Petterson discloses an eye drop container including a body 11, a storage portion 22, an instilling portion 13, and an aerating device 27 having a filter 26 and a duck bill check valve 25 substantially as claimed but does not disclose the aerating device to be located at the bottom of the container. However, Hamamoto teaches another eye drop container with an aerating device 4 and further teaches that the aerating device can be located either at the top, on the side or on the bottom of the container as desired on lines 1-4 of paragraph 34. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Petterson with the aerating device in the bottom of the container as, for example, taught by Hamamoto because Hamamoto clearly teaches that locating the aerating device on the bottom of the container is an art recognized equivalent to a top location that would work equally well as the top location with a high probability of success. In regard to claims 8-10, inlet portion 27 of the aerating device constitutes a cap that would be a supporting floor if placed on the bottom of the container.

3. Claims 7-14, 17-20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson 4,002,168 in view of Fu 5,186,559. Petterson discloses a squeezable eye drop container including a body 11, a storage portion 22, an instilling portion 13, and an aerating device 27 having a filter 26 and a duck bill check valve 25

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substantially as claimed but does not disclose the aerating device to be located at the bottom of the container. However, Fu teaches another squeezable dispensing container also with a duck bill check valve aerating device 130 or 132 which are located in separable bottom caps 28, 30 (claims 11 and 12) which are also floor surface supports (claims 8 and 9) and further teaches that the aerating device can be located on the bottom of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Petterson with the aerating device in the bottom of the container as, for example, taught by Fu because Fu teaches the bottom location to be an art recognized equivalent that would work equally well as the top location with a high probability of success.

4. Claims 7-10, 13, 14, 17, 18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamamoto 2002/0190079 in view of Petterson 4,002,168.

Hamamoto discloses an eye drop container including a body 22, a storage portion 22b, an instilling portion 3, and an aerating device 4 that can be located on the bottom of the container as disclosed on lines 1-4 of paragraph 34 which location would inherently a supporting floor surface (claim 8) substantially as claimed but does not disclose the aerating device to include a filter or a duck bill check valve (claims 13 and 14) or a cap (claims 9 and 10). However, Petterson teaches another eye drop container with an aerating device 4 and further teaches that the aerating device can be provided with a filter 26, a duck bill check valve 25 and an inlet cap 27 for the purpose of ensuring that contaminants do not enter the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the aerating

device of Hamamoto with a filter a duck bill check valve and a cap as, for example, taught by Petterson in order to ensure that contaminants do not enter the container.

5. Claims 15, 16, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamamoto 2002/0190079 in view of Petterson 4,002,168 as applied to claims 7 and 8 above and further in view of Faurie et al. WO 02/38464. Hamamoto discloses a squeezable eye drop container including an outlet valve 31d and an outlet cap 40 substantially as claimed but does not disclose an opening member with an unopened stage. However, Faurie teaches another squeezable drop container having an opening member 18 and an unopened stage 7 for the purpose of ensuring against contamination of the liquid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Hamamoto with an opening member and an unopened stage as, for example, taught by Faurie in order to ensure against contamination of the liquid.

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754